National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 273-1991

September 24, 2004 W-2966

CASES SUMMARIZED
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Lincoln Alexis, d/b/a Alexis Painting Co. (15-CA-16923, et al.; 342 NLRB No. 108) Metairie, LA Sept. 16, 2004. In agreement with the administrative law judge, the Board held that the Respondent violated Section 8(a)(1) of the Act by interrogating employees who went to the Union (Painters District Council 80) concerning their wages and hours and other terms and conditions of employment and by instructing them not to discuss their wages, threatening employees with termination and refusing to transfer them to additional projects because of their resort to the Union, discharging employee Earin Garner because he engaged in protected concerted activity; violated Section 8(a)(4) and (1) by interfering with Board process by seeking information as to whether its employees had resorted to the Board and threatening its employees with termination if they withheld the information; violated Section 8(a)(3) and (1) by laying off employees Maurice Richards and Wilbert Mitchell because they engaged in protected concerted activity; and violated Section 8(a)(3), (4), and (1) by laying off employee Richard Mitchell because he engaged in protected concerted activity. [HTML] [PDF]

(Chairman Battista and Members Walsh and Meisburg participated.)

Charges filed by Maurice Richard, Wilbert Mitchell, Richard Mitchell, and Earin Garner, Individuals; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at New Orleans on Feb. 17, 2004. Adm. Law Judge Lawrence W. Cullen issued his decision March 31, 2004.

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Allied Trades Council (2-CB-18248, 18569; 342 NLRB No. 103) New York, NY Sept. 14, 2004. Members Liebman and Schaumber, with Member Walsh concurring, granted the General Counsel's motion for summary judgment and held that the Respondent violated Section 8(b)(3) of the Act by continuing to seek, through arbitration, an accretion to its bargaining unit that is incompatible with the unit determination in the Regional Director's Decision and Direction of Election in Case 2-RC-22403, thus seeking to apply its collective-bargaining agreement to employees whom the Board has already determined to be outside the bargaining unit; violated Section 8(b)(1)(A) by insisting on application of its entire contract, including the union-security provision, to employees whom the Board has already determined to be outside the bargaining unit; and violated Section 8(b)(2) and (1)(A) by attempting to cause Duane Reade, Inc. to discriminate against its employees. [HTML] [PDF]

Member Walsh agreed with his colleagues that the Respondent's continued pursuit of accretion through arbitration was unlawful. However, he found that it was unlawful only as to seven of the approximately 60 stores involved in the arbitration proceedings because the Respondent's arbitration action conflicted with the Regional Director's Decision and Direction of Election only as to those seven stores.

(Members Liebman, Schaumber, and Walsh participated.)

Charges filed by New York Joint Board, UNITE!; complaint alleged violation of Section 8(b)(1)(A), (2), and (3). General Counsel filed motion for summary judgment April 9, 2002.

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Chipper Express, Inc. (13-CA-41555-1; 342 NLRB No. 105) Orland Park, IL Sept. 15, 2004. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to sign the memorandum of agreement and understanding it reached in bargaining with Teamsters Locals 179, 330, and 673. [HTML] [PDF]

The Respondent, in its answer to the complaint, admitted that the Respondent and Transport Production Systems, Inc. (TPS) were joint employers of certain employees, that the group of Respondent's employees described in the complaint was an appropriate unit, and that the Union was certified as the collective-bargaining representative of those employees. The Board found unpersuasive the Respondent's argument, in its exceptions, that William Carpenter, the vice president of TPS lacked authority to bind the Respondent to a collective-bargaining agreement and, therefore, Respondent did not violate the Act when it refused to sign the agreement that Carpenter had negotiated with the Union.

(Chairman Battista and Members Walsh and Meisburg participated.)

Charge filed by Teamsters Locals 179, 330, and 673; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Chicago on June 10, 2004. Adm. Law Judge William G. Kocol issued his decision July 16, 2004.

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The Courier-Journal, A Division of Gannett Kentucky Limited Partnership (9-CA-39172-1, -2; 342 NLRB No. 113) Louisville, KY Sept. 17, 2004. Chairman Battista and Member Schaumber reversed the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (5) of the Act by making unilateral changes to the healthcare insurance benefits of unit employees on January 1, 2002; and affirmed his dismissal of the allegation that the Respondent violated Section 8(a)(1) and (5) by making unilateral changes to the employees' healthcare insurance on July 1, 2001, as untimely under Section 10(b) of the Act. Member Liebman dissented in part. [HTML] [PDF]

In finding that the Respondent's January 2002 changes in unit employees' health care premiums of benefits did not violate the Act, the majority wrote:

> The changes were implemented pursuant to a well-established past practice. For some 10 years, the Respondent had regularly made unilateral changes in the costs and benefits of the employees' health care program, both under the parties' successive contracts and during hiatus periods between contracts. In each instance, the Union (Graphic Communications Workers Local 619-M) did not oppose the Respondent's changes.

In her partial dissent, Member Liebman asserted that while the Respondent had made many changes unilaterally in the bargaining unit employees' health insurance benefits over a number of years, the Union did not protest the changes until 2002. She contended that lacking either the Union's formal or tacit approval, the Respondent was no longer entitled to act

unilaterally. Member Liebman said: "When the Union ceased to acquiesce, and actively opposed not only the Respondent's specific changes, but also its authority to act unilaterally at all, that underpinning was swept away." She would find that the Respondent violated Section 8(a)(5) by making unilateral changes in unit employees' health care benefits in January 2002.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Graphic Communications Workers Local 619-M; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Louisville on Sept. 9, 2002. Adm. Law Judge Paul Bogas issued his decision Nov. 7, 2002.

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Duane Reade, Inc. (2-CA-34228, et al.; 342 NLRB No. 104) New York, NY Sept. 15, 2004. In agreement with the administrative law judge, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide hire rate wage information requested by the Allied Trades Council on August 13, 2001 and the details concerning wage increases requested on January 6, 2002; failing to pay employees for accrued unused sick leave on or about August 31, 2002; unilaterally ceasing to make contributions to the Vacation and Fringe Benefit Fund, the Allied Welfare Fund, and the Union Mutual Fund; by prematurely declaring impasse and unilaterally implementing its final offer after December 6, 2001; and violated Section 8(a)(1) by retaining for itself and failing to remit to the Union dues that it checked off from employees' paychecks. [HTML] [PDF]

The Board, in adopting the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) by, in the absence of a valid impasse unilaterally ceasing contribution to the various funds, relied on the following: (1) the Respondent ceased contributions to the Vacation and Fringe Benefit Fund on July 1, 2001; and (2) the Respondent's negotiator, at the close of the August 31, 2001 bargaining session, requested that the Union continue to negotiate because the contract expired at midnight.

(Members Schaumber, Walsh, and Meisburg participated.)

Charges filed by Allied Trades Council; complaint alleged violation of Section 8(a)(1) and (5). Hearing at New York, March 24-26, 2003. Adm. Law Judge Eleanor McDonald issued her decision Feb. 18, 2004.

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Lana Blackwell Trucking, LLC (25-CA-28702; 342 NLRB No. 110) Norman, IN Sept. 15, 2004. The Board adopted the administrative law judge's finding that by failing to recall from layoff and by discharging employees Michael L. Howard and Maurice Crowe because they engaged in protected concerted activities and/or union activities, the Respondent violated Section 8(a)(1) and (3) of the Act. [HTML] [PDF]

The Board found no merit in the Respondent's contention that it had the right not to recall Howard and Crowe for any reason, including that they engaged in Section 7 activity, because Teamsters Local 135 had contractually waived their right to recall.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Michael L. Howard, an Individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Bloomington on Nov. 17-18, 2003. Adm. Law Judge Karl H. Buschmann issued his decision April 30, 2004.

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Miller Industries Towing Equipment, Inc. (10-CA-33712, 10-RC-15274; 342 NLRB No. 112) Ooltewah, TN Sept. 17, 2004. Chairman Battista and Member Schaumber adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act, during the UAW's organizing campaign, by threatening that unionization would result in stricter enforcement of rules relating to lunch and breaktimes and by prohibiting off-duty employees from engaging in protected concerted activities in a nonwork area; and that, following the representation election, the Respondent violated Section 8(a)(2) and (1) by creating and dominating the continuous improvement committee, an in-house organization designed to deal with employee working conditions. They determined that the unfair labor practices provide sufficient basis to set aside the results of the election held in Case 10-RC-15274 and ordered that a second election be conducted. [HTML] [PDF]

The majority reversed the judge's findings (1) that statements by General Manager Michael Baker and Chief Executive Officer Jeff Badgley unlawfully threatened that unionization would result in layoffs and (2) that Vice President of Operations Jerry Driscoll threatened employees with loss of overtime opportunities. In reversing the judge, the majority contended that the statements attributed to Baker and Badgley were lawful and do not support a finding of threatened layoff. They found no basis to conclude that the context of Driscoll's remarks to employees that Respondent's flexibility to modify policies to accommodate its last-minute needs "would be hard or might not happen at all" unlawfully threatened employees.

Member Liebman agreed with her colleagues' finding of unfair labor practices committed by the Respondent. However, she would also find that the Respondent threatened employees with layoff and loss of overtime opportunities. She wrote: "As the judge did, I would find these violations, contrary to the majority, which tolerates precisely the sort of employer brinksmanship condemned by the Supreme Court . . . ." in *NLRB v. Gissel Packing Co*., 395 U.S. 575, 620 (1969).

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Auto Workers; complaint alleged violation of Section 8(a)(1) and (2). Hearing at Chattanooga, Nov. 20 and 21, 2002. Adm. Law Judge Margaret G. Brakebusch issued her decision Jan. 21, 2003.

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Premier Plastering, Inc. (8-RC-16341; 342 NLRB No. 111) Cuyahoga Falls, OH Sept. 16, 2004. Having granted Bricklayers Local 16's (Intervenor) request for review of the Regional Director's Decision and Direction of Election, the Board held that the only unit appropriate for bargaining is a residual geographic unit of all plasterers working in areas not otherwise covered by a current 9(a) agreement. It remanded the proceeding to the Regional Director to direct an election in a unit of all the Employer's plasterers excluding those areas covered by the current 9(a) agreement between the Employer and Plasterers Local 179 (Petitioner). The Regional Director found appropriate the petitioned-for unit of plasterers working in Ashtabula, Cuyahoga, Geauga, Lake, and Loraine Counties in Ohio. [HTML] [PDF]

(Chairman Battista and Members Schaumber and Walsh participated.)

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St. Luke's Memorial Hospital, Inc. (24-CA-9271; 342 NLRB No. 106) Ponce, PR Sept. 15, 2004. The Board reversed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by: (1) discriminatorily enforcing its no-solicitation/no-distribution policy against Unidad Laboral de Enfermeras y Empleados de la Salud; and (2) discriminatorily requiring the Union to notify the Respondent 2 days before it came to visit its represented employees at the hospital (the 2-day rule). [HTML] [PDF]

In exceptions, the Respondent asserted that the General Counsel failed to establish that the Respondent applied its no-distribution/no-solicitation and 2-day rules in a discriminatory manner against the Union. The Board agreed, concluding that the record failed to demonstrate that the Respondent discriminatorily applied its no-solicitation/no-distribution policy against the Union while allowing other organizations to engage in conduct that would arguably violate the policy. It also stated that because there was no evidence that the Respondent allowed other entities to visit its property without prior notice, there is no evidence that the Respondent discriminatorily applied a prior notice rule to the Union. Accordingly, the Board dismissed the complaint.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Unidad Laboral de Enfermeras y Empleados de la Salud (ULEES); complaint alleged violation of Section 8(a)(1). Hearing at Hato Rey on March 11 and 12, 2003. Adm. Law Judge George Alemán issued his decision Aug. 21, 2003.

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*TDK Ferrites Corp. (*17-RC-12209; 342 NLRB No. 81) Shawnee, OK Sept. 14, 2004. The Board reversed the Regional Director's Decision and Direction of Election in which he found appropriate the petitioned-for unit of maintenance department employees, production technicians, tooling specialists, and setup specialists employed by the Employer at its Shawnee, Oklahoma facility. It remanded the proceeding to the Regional Director for further appropriate action. [HTML] [PDF]

The Petitioner, Arkansas Regional Council of Carpenters, is seeking to represent the four groups of "maintenance" employees employed at the plant. The Employer contended that the appropriate unit must include all full-time and regular part-time production and maintenance employees at its Shawnee facility, arguing that its production and maintenance functions are so highly integrated that carving out the unit requested by the Petitioner would be inappropriate. It asserted that production and maintenance employees throughout the facility share a community of interest with the rest of the employees at the plant, as evidenced by, among other things, their common production and maintenance duties, common supervision, common working conditions, and their frequent interaction and interchange.

In agreement with the Employer that the petitioned-for unit is not an appropriate unit for collective-bargaining, the Board stated that the record does not support a finding that the unit sought is composed of a distinct and homogeneous group of employees with interests, separate and apart from other employees at the Employer's plant.

(Chairman Battista and Members Liebman and Schaumber participated.)

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Tarmac America, Inc. (12-CA-22501, 22595; 342 NLRB No. 107) Deerfield Beach, FL Sept. 15, 2004. The administrative law judge found, and the Board agreed, that by refusing to recognize Operating Engineers Local 487 as the bargaining representative of the yard person/forklift operator employed at the Ft. Pierce block distribution facility, and by refusing to provide the Union with relevant requested information, the Respondent violated Section 8(a)(5) and (1) of the Act. [HTML] [PDF]

The issue presented was whether the yard person/forklift operator position at the Respondent's newly created Ft. Pierce block distribution facility should be included within the existing collective-bargaining unit. The Respondent transferred Tom Hendrickson, a forklift operator from a nonunion block manufacturing facility outside of the Union's geographic jurisdiction, to Ft. Pierce. When the Union learned of Hendrickson's new position, it informed the Respondent that Hendrickson belonged within the established collective-bargaining unit.

The Board found that Hendrickson's position was that of a forklift operator, performing essentially the same work performed by forklift operators at the Respondent's other facilities. Because forklift operators within the Union's geographic jurisdiction are included in the

bargaining unit, the Board held that Hendrickson's position is included in the existing bargaining unit at the Ft. Pierce facility.

(Members Liebman, Schaumber, and Meisburg participated.)

Charges filed by Operating Engineers Local 487; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Miami, July 7 and 8, 2003. Adm. Law Judge Michael A. Marcionese issued his decision Dec. 5, 2003.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Mail Contractors of America, Inc., Kansas City Terminal (Des Moines Area Postal Workers) Kansas City, KS September 9, 2004. 17-CA-21836; JD(SF)-67-04, Judge Thomas M. Patton.

Cheney Construction, Inc. (Carpenters Local 918) Manhattan, KS September 9, 2004. 17-CA-22517; JD(SF)-69-04, Judge Albert A. Metz.

KSL DC Management, LLC d/b/a Hotel del Coronado (Hotel & Restaurant Employees Local 30) Coronado, CA September 13, 2004. 21-CA-36119, 36195; JD(SF)-70-04, Judge Lana H. Parke.

Steelworkers Local 14693 (Skibeck, P.L.C., Inc.) Warren and Butler Counties, OH September 13, 2004. 9-CB-10982, 11007; JD-90-04, Judge John T. Clark.

Millennium Maintenance & Electrical Contracting, Inc. (Electrical Workers [IBEW] Local 3) New York, NY September 10, 2004. 2-CA-35054; JD(NY)-39-04, Judge Raymond P. Green.

Bowling Transportation, Inc. (Individual) Owensboro, KY September 14, 2004. 25-CA-26896; JD-86-04, Judge Ira Sandron.

Steelworkers Local 224 (an Individual) Birmingham, AL September 15, 2004. 26-CB-4417; JD(ATL)-48-04, Judge Keltner W. Locke.

Wisconsin Bell, Inc., an Ameritech Corp., d/b/a SBC Midwest (Communications Workers Local 4603) Milwaukee, WI September 15, 2004. 30-CA-16442-1; JD(ATL)-49-04, Judge George Carson II.

North Hills Office Services, Inc. (Service Employees Local 32B-J) Melville, NY September 15, 2004. 29-CA-25715, et al.; JD(NY)-38-04, Judge Howard Edelman.

Cintas Corp. (Needlestrades Employees [UNITE]) Mason, OH September 16, 2004. 13-CA-40821, et al.; JD(NY)-40-04, Judge Joel P. Biblowitz.

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LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(***In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)***

DECISION AND DIRECTION[that Regional Director open and count challenged ballots]

MEC Construction, Inc., Clarksburg, WV, 6-RC-12291, September 13, 2004
Mack Printing Company t/a Port City Press, Baltimore, MD, 5-RC-15679, September 17, 2004

DECISION AND CERTIFICATION OF REPRESENTATIVE

Alpha Baking Company, Inc., Cudahy, WI, 30-RC-6569, September 16, 2004
Infinia at Willman, Inc., Willmar, MN, 18-RC-17263, September 17, 2004
Pontiac Nursing Home, LLC, Oswego, NY, 3-RC-11422, September 17, 2004

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Wella Manufacturing of Virginia, Inc., Richmond, VA, 5-RC-15726, September 15, 2004

DECISION AND ORDER REMANDING[to Regional Director for appropriate action]

Domestic Linen and Uniform, Kankakee, IL, 33-RC-4849, September 15, 2004

SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Morgan Services, Inc., Chicago, IL, 13-RD-2390, September 16, 2004

***

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Carmax Auto Super Stores, Inc., Boynton Beach, FL, 12-RC-9029, September 15, 2004

DECISION AND CERTIFICATION OF REPRESENTATIVE

New York Dialysis Services, Rochester, Victor and Pittsford, NY, 3-RC-11437, September 17, 2004

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Centerplate Management, Inc., Bridgeport, CT, 34-RC-2086, September 15, 2004

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(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Mercy Sacramento Hospital, Rancho Cordova, CA, 20-RC-17967, September 15, 2004

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